

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE

Call to Order: By **CHAIRMAN EDWARD B. BUTCHER**, on March 31, 2005
at 3:35 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edward B. Butcher, Chairman (R)
Rep. Jonathan Windy Boy, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Bob Bergren (D)
Rep. Gary Branae (D)
Rep. Kevin T. Furey (D)
Rep. Wanda Grinde (D)
Rep. Ralph Heinert (R)
Rep. Llew Jones (R)
Rep. Jim Keane (D)
Rep. Bruce Malcolm (R)
Rep. Jim Peterson (R)
Rep. Diane Rice (R)
Rep. John (Jack) W. Ross (R)
Rep. Veronica Small-Eastman (D)
Rep. Dan Villa (D)
Rep. Karl Waitschies (R)
Rep. Jeanne Windham (D)
Rep. Brady Wiseman (D)

Members Excused: Rep. Carol Lambert, Vice Chairman (R)

Members Absent: None.

Staff Present: Linda Keim, Committee Secretary
Krista Lee Evans, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HJ 38, 3/22/2005
Executive Action: HJ 38, SB 320, SB 259, SB 461, SB
314, HB 766

(Note: REP. WAITSCHIES served as Chairman for this Hearing.)

HEARING ON HJ 38

SPONSOR: REP. EDWARD BUTCHER, HD 29, WINIFRED

Opening Statement by Sponsor:

REP. EDWARD BUTCHER opened the hearing on **HJ 38**, a joint resolution of the Senate and the House urging the Montana congressional delegation to cosponsor and support Federal legislation to restore competition to the livestock industry. He explained that in 1960 the top four beef packing firms were slaughtering less than 30% of all fed cattle. Today the packing firms of Tyson, Swift and Cargill are slaughtering 80%.

The resolution addresses the issue of restoring competition into the livestock industry that has to be addressed at the Federal level. The Captive Reform Act and a ban on packer ownership is going to restore fairness and competition by restricting the packer's ability to capture and manipulate the market. He explained that livestock become captive when they are tied to one packer and they are not open to normal supply and demand forces. He stated that this is an easy way to depress livestock prices.

{Tape: 1; Side: A; Approx. Time Counter: 2.8 - 7.5}

Proponents' Testimony:

Dan Teigen, Chairman, Northern Plains Resource Council (NPRC) Agriculture Task Force, said the United States Department of Agriculture (USDA) has decided not to take a position and Congress is addressing the issue regarding the three large meat packers. He stated that they need to have the Montana legislature send a message to the Montana congressional delegation that this is an important issue. The two bills will prevent the unfair use of captive supplies by requiring an open and public bidding process for the cattle and hogs and also prevent packer ownership of cattle.

He explained that in most marketing arrangements the price that a meat packer gives a livestock producer is based on a future reference price. The reference price could be an average price a packer would pay for livestock the week after a marketing arrangement. He stated that this is also a price that the packers influence downward with their captive supplies.

Mr. Teigen said that the bills would not prevent forward contracts as they are important marketing tools to coordinate supply lines in the packing industry. The bills would require a

fixed price in the contracts and marketing agreement that could not be influenced later in a detrimental manner to the producer. He stated that a lot of infrastructure is involved in the bidding process for electronic markets and this new practice needs to be accommodated.

He stressed that the Captive Supply Reform Act specifically addresses packers and meat packers transactions. It amends Section 202 of the Packers and Stockyards Act. He stated that packers would be prevented from owning cattle intended for slaughter for less than seven days.

{Tape: 1; Side: A; Approx. Time Counter: 7.5 - 15.0}

Chris Christaens, Montana Farmers Union, said the essence of the Resolution is between Lines 17 and 22. He stated anything that can be done to bring some competition to the livestock industry makes sense.

{Tape: 1; Side: A; Approx. Time Counter: 15.0- 16.2}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

REP. WISEMAN said it is widely believed that the meat packing industry is engaging in predatory pricing and asked if there has been any documentation to prove the manipulation. **Mr. Teigen** said there was a lot of documentation available and that a jury in Alabama ruled in favor of cattle producers against Tyson in the Picket Case for over \$1 billion.

REP. WISEMAN asked if there was any consensus among Montanans that there should be more severe action taken in terms of a lawsuit or a prosecution. **Mr. Teigen** said that the best effort is the case being pursued in Alabama and that litigation is always the last resort. He said the NPRC pursued this through USDA and had a rule-making in the Federal Register for the Captive Supply Reform Act but nothing came of it.

{Tape: 1; Side: A; Approx. Time Counter: 17.2 - 22.8}

REP. WISEMAN asked why they wouldn't take further steps and call for the congressional delegation to pursue a full blown anti-trust investigation in Congress and why they wouldn't demand that the Justice Department prosecute these companies. **REP. BUTCHER** said they were taking one step at a time and this is the first step in the process. He stated that other factors are involved; i.e., Cargill is privately held, and anti-trust violations can only be pursued against a publically-traded company.

REP. WISEMAN stated that is there is wide-spread, long-term illegal action going on and they should be insisting on prosecution of the people who are manipulating the market. **REP. BUTCHER** said they have to go through the court case first. Congressional efforts will put this into Statute. He stated, "This will end up in litigation; it is not as simple as if it were a publically-traded company that is already under heavy regulatory laws. A private company is regulated in a different way." He said he had been tracking this for 30 years.
{Tape: 1; Side: A; Approx. Time Counter: 22.8 - 24.4}

REP. PETERSON asked if there was a Federal law in place that required mandatory price reporting on all cattle purchased. **Mr. Teigen** said, "Yes."

REP. PETERSON asked if that law applied to all cattle nationwide. **Mr. Teigen** said that the law does exist and they hope it will still help the industry.

REP. PETERSON asked if a packer today can buy cattle and not report the price. **Mr. Teigen** said that he was not familiar with all the details and exemptions for doing that.
{Tape: 1; Side: A; Approx. Time Counter: 24.4 - 26.2}

REP. PETERSON said he has a Made in Montana beef program and hypothesized that if he made a deal with Excel Corporation in Colorado, how would they guarantee that he got Montana cattle for 365 days/year for his program without being able to forward contract Montana cattle. **Mr. Teigen** said the larger problem that pertains to small packers, marketing alliances, cooperatives, marketing arrangements is being priced out of business. He noted that open public bidding works both ways.

If a company tries to come in and undermine a business enterprise unfairly, that would be predatory pricing and illegal. You would have a realistic chance proving that you have been predatory priced out of existence with the current law. If you start up an alliance and someone tries to bid away your cattle and unfairly undermine your business, it is a hard case to prove. An alliance would have a better chance to stand on its own merits under this legislation and could address any market manipulation.

REP. PETERSON said he did not understand how a major processor would supply Montana beef day after day if they are only allowed to contract seven days in advance. **Mr. Teigen** said this did not eliminate forward contracts. The ownership under the Packer Ban would be seven days of actual ownership, but they are free to forward contract anywhere for whatever suits their needs. It

just requires a firm base price on the forward contract. He said that it would be less able to be manipulated.

REP. PETERSON asked if that meant that the price can't be fixed more than seven days out front. **Mr. Teigen** said the seven days of the packer taking ownership would be fixed. He could not say there would not be other unique circumstances where that time period could be different

{Tape: 1; Side: A; Approx. Time Counter: 26.2 - 32}

REP. PETERSON asked about selling calves in June for delivery in October and not agreeing on the price until seven days before they are delivered. **Mr. Teigen** said if he gets a price he can live with after shopping around in June, they take a firm base in June and come out ahead on the average.

REP. PETERSON asked Mr. Teigen if he would agree to a contract to deliver his calves in October and do it in June but not fix the price until seven days before the cattle are delivered. **Mr. Teigen** said that as a cow/calf producer ranch they sell calves through forward contracts and they line up contracts even earlier than June. They negotiate a fixed price in their contracts so they know what to count on based on what they think is fair, not a fluctuating price based on some future indicators.

VICE CHAIRMAN WAITSCHIES noted that the debate is to support the upcoming reintroduced version of the Federal ban on packer ownership and asked the Committee not to get too technical.

Closing by Sponsor:

REP. BUTCHER said that the forward contracting issue concerns producers contracting with feedlots and emphasized that feedlots and packing plants are separate issues. This resolution is supporting Federal legislation to put the packing plants on a competitive basis. He pointed out that when packing plants can have ownership of cattle through subsidiaries or other means, they are utilizing captive livestock to even out the curves whenever supply and demand comes into place.

The issue boils down to an attempt to protect the independent rancher from going out of business. He stated the issue is that packers have gone from 30% to 80% of control. From 1993 to 2002 the number of cattle producers dropped by 20% and the cattleman's share of the consumer dollar dropped from \$.59 to \$.435, while average consumer prices increased by \$.41/pound.

He noted that the most dramatic change has been in hogs; 65% of hog producers have gone out of business in the last ten years.

The open market price for hogs dropped 24.4%, the hog producers share of the retail dollar dropped 37.8% and the retail price of pork increased 35%. He called for support of the resolution to ask Congress to address the issue.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 7.7}

EXECUTIVE ACTION ON HJ 38

Motion: REP. WINDHAM moved that HJ 38 BE ADOPTED.

Discussion:

REP. PETERSON asked the Committee to read Lines 29-30 on Page 1 and said they would be supporting something that hasn't been written; i.e., an upcoming version of Federal legislation. His concern is unintended consequences. He said that lawsuits have not been resolved because collusion could not be proven but this has been going on since 1973.

REP. WISEMAN said that a long-term ability to control the market doesn't make it right or legal; law enforcement should do something about it but Congress has refused to investigate. He advocated criminal anti-trust investigations. He felt that this resolution is too mild but will support the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 7.7 - 12.2}

REP. WINDHAM said this is just a House Joint Resolution and referred to 1992 when Montanans voted in a Constitutional Amendment to limit a sales tax that didn't exist.

REP. WAITSCHIES discussed Page 1, Line 30 with REP. BUTCHER and a conceptual amendment was drafted to clarify that the ban referred to packer ownership of livestock for more than seven days.

Motion/Vote: REP. WAITSCHIES moved that A CONCEPTUAL AMENDMENT TO SPECIFY LIVESTOCK OWNERSHIP FOR MORE THAN SEVEN DAYS BE ADOPTED FOR HJ 38. Motion carried 19-0 by voice vote with REP. KEANE voting no. REP. LAMBERT voted by proxy.

Motion: REP. WISEMAN moved that HJ 38 BE ADOPTED AS AMENDED.

Discussion:

REP. PETERSON commented that there have been serious anti-trust investigations conducted over the last 20 years and none have found conclusive evidence of collusion. He said that the court case referred to earlier is still pending. He stressed that this has not gone unnoticed and cited unintended consequences.

REP. WAITSCHIES asked why Montana Stockgrowers, Women Involved in Farm Economics (WIFE), and Our Calf weren't represented at the Hearing.

CHAIRMAN BUTCHER asked Chris Christaens to respond.

Chris Christaens, Montana Farmers Union, said several of the agriculture coalition folks told him that they make a practice of testifying on no more than four to five resolutions. He noted that their limit has been passed. He said that he had talked to WIFE and Farm Bureau earlier and they support this resolution.

CHAIRMAN BUTCHER noted that they weren't here in opposition.

Vote: Motion carried 15-5 by roll call vote with **REP. KEANE**, **REP. MALCOLM**, **REP. PETERSON**, **REP. ROSS**, and **REP. WAITSCHIES** voting no. **REPS. HEINERT** and **LAMBERT** voted by proxy.
{Tape: 1; Side: B; Approx. Time Counter: 12.2 - 22}

EXECUTIVE ACTION ON SB 320

Motion: **REP. PETERSON** moved to RECONSIDER SB 320.

Motion: **REP. PETERSON** moved SB 320 As Amended.

Discussion:

REP. ROSS asked if the amendments were on the bill. **CHAIRMAN BUTCHER** said that SB32001 and SB32003 are already on the bill.

REP. PETERSON said that auction markets and concentrated animal feeding facilities need this bill. He stated that the general permits expire in July and the Department of Environmental Quality supports the bill. He asked for support.

REP. RICE strongly urged support. This is for small livestock yards all across the state and is an important bill. She said that she hoped it didn't get held up on a partisan issue.

REP. BERGREN asked **CHAIRMAN BUTCHER** about parliamentary procedure. He said, "At the beginning of the year, you said that to reconsider or move a bill on a tie vote, that they had to move a vote." He asked if that had occurred.

CHAIRMAN BUTCHER asked **REP. PETERSON** if he had "the extra vote."

REP. PETERSON said he was told by the stockgrowers that **REP. BERGREN** was ready to move this bill.

CHAIRMAN BUTCHER said, "They have a policy if there isn't an extra vote." He noted he understood that there was one.

REP. WAITSCHIES asked **REP. PETERSON** to see if **REP. BERGREN** would be willing to change his vote.

REP. PETERSON spoke to **REP. BERGREN** and said, "I was honestly told by the stockgrowers that they had discussed this bill with you and that you felt it was okay to pass this bill out. Was I misinformed?" **REP. BERGREN** said, "At this time, yes."

CHAIRMAN BUTCHER asked **REP. PETERSON** to withdraw his motion. (REP. PETERSON did not withdraw his motion.) **CHAIRMAN BUTCHER** said that since it was on the table they would go ahead and vote it. He stated, "I erred in accepting it, I was under the illusion there was an extra vote there."

Vote: Motion to reconsider as amended failed on a tie vote 10-10 by roll call vote with **REP. ANDERSEN**, **REP. BUTCHER**, **REP. HEINERT**, **REP. JONES**, **REP. LAMBERT**, **REP. MALCOLM**, **REP. PETERSON**, **REP. RICE**, **REP. ROSS**, and **REP. WAITSCHIES** voting aye. **REPS. LAMBERT** and **HEINERT** voted by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 22 - 27.4}

EXECUTIVE ACTION ON SB 259

Motion: **REP. RICE** moved that SB 259 BE CONCURRED IN.

Motion: **REP. RICE** moved that AMENDMENT SB025902 BE ADOPTED.
[EXHIBIT](#)(agh68a01)

Discussion:

Ms. Evans stated this is the transmittal deadline for general bills with amendments. Bills with amendments have to be moved out of Committee or they die.

REP. RICE addressed the amendment.

Vote: Motion carried unanimously 20-0 by voice vote. **REPS. HEINERT** and **LAMBERT** voted by proxy.

Motion: **REP. RICE** moved that SB 259 AS AMENDED BE CONCURRED IN.

Motion/Vote: **REP. RICE** moved that AMENDMENT SB025901 BE ADOPTED. Motion carried 19-1 with **REP. KEANE** voting no. **REPS. HEINERT** and **LAMBERT** voted by proxy.
[EXHIBIT](#)(agh68a02)

Motion/Vote: REP. RICE moved that SB 259 BE CONCURRED IN AS AMENDED. Motion carried 18-2 by voice vote with REP. KEANE and REP. MALCOLM voting no. REPS. HEINERT and LAMBERT voted by proxy.

REP. RICE offered to carry the bill on the House floor.
{Tape: 1; Side: B; Approx. Time Counter: 27.4 - 32}

EXECUTIVE ACTION ON SB 461

Motion: REP. WINDY BOY moved that SB 461 BE CONCURRED IN.

Motion: REP. RICE moved that SB046102 BE ADOPTED.
[EXHIBIT](#)(agh68a03)

Discussion:

REP. RICE explained the amendment.

REP. WINDY BOY asked if this would change the Fiscal Note.

CHAIRMAN BUTCHER said previous testimony indicated the Department of Fish, Wildlife and Parks (FWP) already has the monitors and they will be passed out as needed after they are all collected.

REP. FUREY said FWP did not know how many monitors they had, but they cost \$600 each.

CHAIRMAN BUTCHER asked REP. RICE if the monitors would become a fiscal item if more were needed. REP. RICE said they are now in the possession of U.S. Fish, Wildlife and Parks and they will transfer to State FWP. They said all the equipment would move forward with State management. She said that \$600,000 has been allocated from the Federal Government for wolf management so they have the money.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.9}

REP. SMALL-EASTMAN asked if lessees have to go over the landowners signature to get a monitor. REP. RICE said that "designee" would mean "lessee."

REP. KEANE noted that this has to be included in HB 2 according to the Fiscal Note and asked if it would increase the Fiscal Note if they buy more monitors. Ms. Evans said that if FWP bought more monitors it would increase the Fiscal Note if they used State funds. If they used Federal funds that have been allocated to them for Federal wolf management in Montana, it would not increase the Fiscal Note.

REP. RICE responded that the day they were working on HB 2 she specifically asked and was told that those funds were "off book." She also asked FWP Chief of Staff, Chris Smith and was told they received the funds.

REP. MALCOLM asked how many monitors were projected to be needed. **REP. RICE** said she asked and no one would say. She stated, "When they had two wolf packs in the Madison Valley that were striking nightly, killing up to five animals a night they put eight out."

REP. MALCOLM asked how many monitors were needed statewide. **REP. RICE** said that FWP's management program is not statewide at this time. It is only south of I-90.

{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 7.9}

CHAIRMAN BUTCHER noted that information points to one monitor per pack, so it depends on how many packs there are. **REP. RICE** said there would be around five wolf packs.

REP. VILLA discussed whether expenditure of FWP money goes toward the cap.

REP. RICE followed up with more information about monitors and said that not every person had a monitor. She stated that in her district they had a phone tree, so if one person had the monitor they called their neighbors to alert them if the monitor indicated there was a wolf nearby.

Vote: Motion carried 16-4 by voice vote with **REP. FUREY**, **REP. KEANE**, **REP. MALCOLM**, and **REP. VILLA** voting no. **REPS. HEINERT** and **LAMBERT** voted by proxy.

(Note: **REP. KEANE** returned and voted on the bill.)

Motion/Vote: **REP. RICE** moved that SB 461 BE CONCURRED IN AS AMENDED. Motion passed 18-2 by voice vote with **REP. KEANE** and **REP. VILLA** voting no. **REP. LAMBERT** voted by proxy.

REP. RICE offered to carry SB 461 on the House floor.
{Tape: 2; Side: A; Approx. Time Counter: 7.9 - 10.4}

EXECUTIVE ACTION ON SB 314

Motion: **REP. WINDY BOY** moved that SB 314 BE CONCURRED IN.

Motion: **REP. WINDHAM** moved that SB031403 BE ADOPTED.
[EXHIBIT](#) (agh68a04)

Discussion:

Ms. Evans explained the amendment.

Vote: Motion carried unanimously 20-0 by voice vote. REPS. VILLA and LAMBERT voted by proxy.

Motion/Vote: REP. WINDHAM moved that SB 314 BE CONCURRED IN AS AMENDED. Motion carried unanimously 20-0 by voice vote. REPS. VILLA and LAMBERT voted by proxy.

{Tape: 2; Side: A; Approx. Time Counter: 10.4 - 14.1}

EXECUTIVE ACTION ON SB 766

Motion/Vote: REP. WISEMAN moved that HB 766 BE TABLED. Motion carried unanimously 20-0 by voice vote. REPS. VILLA, BERGREN, and LAMBERT voted by proxy.

With no further business, **CHAIRMAN BUTCHER** adjourned the meeting.
{Tape: 2; Side: A; Approx. Time Counter: 10.4 - 15.6}

ADJOURNMENT

Adjournment: 4:55 P.M.

REP. EDWARD B. BUTCHER, Chairman

LINDA KEIM, Secretary

EB/lk

Additional Exhibits:

EXHIBIT ([agh68aad0.PDF](#))